

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: The Pines at Rutland Center for)	
Nursing and Rehabilitation, Renovation)	
of Floors Three and Four)	Docket No. GMCB-013-16con
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DECISION, ORDER, AND CERTIFICATE OF NEED

Introduction

On November 10, 2016, applicant National Health Care Associates, Inc., owner of The Pines at Rutland Center for Nursing and Rehabilitation (The Pines), filed a certificate of need (CON) application to renovate and complete construction on two floors of the 125-bed skilled nursing facility in Rutland. The cost of the project is \$3,772,009.

For the reasons outlined below and subject to the conditions contained herein, we approve the application.

Procedural Background

After submitting a letter of intent to the Board on July 12, 2016, the applicant filed a certificate of need application and request for expedited review on November 10, 2016, which was granted on November 29, 2016. On December 6, 2016, the Long Term Care Ombudsman (Ombudsman), a project of Vermont Legal Aid, filed a Notice of Intervention in the proceeding. Over the course of the next several months the Board requested additional information of the applicant, which provided its final responses to the requests on April 27, 2017. The Board received no petitions for interested party or amicus curie status, and no public comments. The application was closed on May 17, 2017.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9434 (a) (1) (certificate of need required for capital expenditure that exceeds \$1.5 million).

Findings of Fact

1. The Pines is a 125-bed, four-story skilled nursing facility located at 99 Allen Street in Rutland. The facility offers its residents specialized services and programs including clinical care, physical, occupational and speech therapies, social services, and recreation therapies. Application (App.) at 1-2.

2. The applicant proposes to renovate and make cosmetic upgrades to 11,692 square feet of interior space on each of the facility's third and fourth floors. Proposed renovations include installing new flooring, lighting fixtures, electrical devices and a nurse call system; repainting walls and other surfaces; upgrading the plumbing and HVAC system; creating a medication room and new vented oxygen closet; relocating the clean work room and nourishment area, and constructing partitions in four of the four-bed residential rooms to create semi-private areas for the rooms' residents and their visitors. The upgrades also include the purchase of new furniture. Four years ago, similar renovations and upgrades were made on the second floor. App. at 1-2.

3. The renovations to the third and fourth floor will improve resident satisfaction, safety, and quality of care, and will make the work area more efficient for facility staff. The renovations follow best practices for renovating a skilled nursing facility and will create a more home-like environment, more meaningful opportunities for social exchange, and more privacy for residents and their visitors. App. at 14.

4. Shortly after the application was filed, the Ombudsman filed a Notice of Intervention in the proceeding based on its concern that the project would not comply with recent federal regulations for skilled nursing facilities. *See* 42 CFR § 483.90(a)(7) (resident rooms must have outside window); § 483.90(f) (bathroom facilities) and § 483.90(e) (sleeping rooms limited to two residents). To ensure these concerns were addressed, the Ombudsman submitted proposed questions for the applicant on January 6, 2017.

5. In response, the applicant confirmed that each sleeping room will have an outside window in satisfaction of 42 CFR § 483.90(a)(7); that subsection 483.90(f) does not apply to this project, and that the Department of Disabilities, Aging and Independent Living (DAIL) authorized a variance from subsection 483.90(e)'s requirement limiting the number of residents per sleeping area to two.¹ *Id.* On May 15, 2017, the Ombudsman advised the Board that it does not object to the project moving forward. Ombudsman Letter (May 15, 2017).

6. The applicant plans to renovate the facility in phases over the course of fifty weeks to minimize disruption to residents who will be temporarily relocated within the facility. The applicant will provide affected residents and their families with notice in advance of the temporary relocations. App. at 8.

7. DAIL has provided a letter of support for the project, in which it notes that The Pines is in substantial compliance with its regulatory requirements. DAIL Letter (Jan. 4, 2017). On the Nursing Home Compare website,² the Centers for Medicare & Medicaid Services (CMS) rated

¹ Under 42 C.F.R. § 483.90(e)(3), DAIL's Survey and Certification Unit may "permit variations in requirements . . . [if] the variations: (i) are in accordance with the special needs of the residents; and (ii) will not adversely affect residents' health and safety." DAIL reviewed the proposed project and granted a variance on April 27, 2017. *See* Letter from Pamela Cota, DAIL Licensing Chief, to Shireen Hart (Apr. 27, 2017).

² The CMS ratings are intended to help consumers compare and select Medicare and Medicaid certified skilled nursing facilities. On a scale of one to five, five is the highest rating. For more information, *see* <https://www.medicare.gov/NursingHomeCompare/About/What-Is-NHC.html>.

the facility four stars out of a possible five overall, and five of five stars for quality, as of the date of its CON application. App. at 2-4.

8. Over the past six months, the facility's occupancy rate has been in the low 90 percent range, indicative of the need for the 125 skilled nursing beds in the Rutland region. *See* DAIL Letter of Support, (Jan. 4, 2017) at 2.

9. The total cost of the project is \$3,772,009. App. at 1,7; Attachment 1, Table 1 (Project Costs). The applicant will finance the project with a commercial loan amortized over 20 years at 4.5 percent interest. App. at 8; Attachment 1, Table 2 (Debt Financing Arrangement). The project is not expected to increase costs of care and no less costly alternative is possible. The applicant expects its revenue will increase as a result of the renovations and upgrades, which will help attract more commercial and private pay residents to the facility. Attachment 1, Table 6C (Revenue Source Projections). The applicant has shown that it is sufficiently capitalized, has favorable current and projected financial conditions and has adequate liability insurance in force. App. at Attachment 9, 10.

Conclusions of Law

We first address a procedural matter. Along with its initial filing, the applicant requested, and the Board granted, expedited review for the project pending public notice. On December 6, 2016, the Ombudsman, whose office may participate in a proceeding as a matter of right, *see* 18 V.S.A. 9440(c)(9), filed a Notice of Intervention with the Board. The Board received no petitions for intervention or competing applications from other entities. The Ombudsman expressed concerns that the proposed project may not be in full compliance with new federal regulations. Finding of Fact (Finding) ¶ 4. As discussed above, the applicant has satisfactorily addressed the Ombudsman's concerns and in turn, the Ombudsman does not oppose the project. Finding ¶ 5. We therefore proceed with our consideration of this application without further delay or additional process.

Turning to the application's merits, Vermont law outlines eight criteria an applicant must meet before a CON will issue. First, the application must be consistent with the Health Resource Allocation Plan (HRAP) which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). Our review of the application here shows that the applicant satisfies this criterion. *See* Standard 1.9 (costs and methods for proposed renovation must be necessary and reasonable), Standard 5.3 (DAIL must provide letter in support); Standard 5.4 (applicant is sufficiently capitalized and insured to protect residents against substandard care); Findings ¶¶ 3, 6, 7, 9.

Next, the applicant must demonstrate that the cost of the project is reasonable and sustainable, that the project will not increase costs of care, and that less expensive alternatives are not available or appropriate. 18 V.S.A. § 9437(2). Based on the financial tables submitted that include its revenue projections, the applicant has shown that it can sustain the cost of the

CMS provides information regarding the elements of QAPI on its website at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/QAPI/qapidefinition.html>.

project without increasing the cost of care. The renovations, similar to the ones performed recently on the second floor of the building, are limited to the building's third and fourth floors. The renovations will modernize the facility so that it will meet current standards and improve the quality of life for the residents. As such, there are no appropriate, less costly alternatives available. Findings ¶ 2, 3, 9. We conclude that the applicant has met the second criterion.

We also conclude that the applicant has met the third criterion under which it must demonstrate that there is an "identifiable, existing, or reasonably anticipated need" for the project. 18 V.S.A. § 9437(3). Renovations and upgrades must be made periodically to maintain the facility, ensure patient safety, privacy and comfort, and to support best practices in the delivery of care. The applicant is making needed updates to functional systems such as HVAC, plumbing and electrical, is installing partitions to provide more privacy for patients and their families, and is making the work areas more efficient for staff. Findings ¶¶ 2, 3. We therefore find the applicant has satisfied this criterion.

The applicant has further demonstrated that it has met the fourth criterion. 18 V.S.A. § 9437(4) (project must improve the quality of health care or provide greater access for Vermonters, or both). The project will improve the quality of health care by making the living environment more attractive, safe and comfortable for the residents; in addition, the work areas for staff will be upgraded and more efficient. Finding ¶ 3. There will be no undue impact on, or change to, the services currently offered by the applicant, in satisfaction of the fifth criterion. 18 V.S.A. § 9437 (5). Findings ¶¶ 1, 6.

Last, we conclude, based on the reasons discussed above, that this project serves the public good in satisfaction of the sixth criterion, and that the final two criteria, to the extent that they are applicable, are also satisfied. *See* 18 V.S.A. §§ 9437(6) (project must serve the public good; 9437(7) (consideration of availability of transportation); 9437(8) (applicable only to information technology projects).

Based on the above, we approve the applicant's request for a certificate of need subject to the conditions outlined below.

CERTIFICATE OF NEED AND CONDITIONS

The Board shall issue a certificate of need to the applicant, subject to the following terms and conditions:

- A. The applicant shall comply with the scope of the project as described in the application and other materials it has submitted to the Board relevant to this project. This certificate of need is limited to the project and activities described therein.
- B. The project as described in the application shall be fully implemented within two years of the date of this certificate of need or the certificate of need shall become invalid and deemed revoked.

- C. Noncompliance with any provision of this certificate of need or applicable ordinances, rules, laws and regulations shall constitute a violation of this certificate of need and may be cause for enforcement action pursuant to 18 V.S.A. §§ 9445, 9374(i), and any other applicable law.
- D. This certificate of need is not transferable or assignable and is issued only for the premises and entity named in the application.
- E. If the applicant contemplates or becomes aware of a potential or actual nonmaterial change, as defined in 18 V.S.A. § 9432(12), or a material change as defined in 18 V.S.A. § 9432(11), to the scope or cost of the project described in its application and as designated in this certificate of need, it shall file a notice of such change immediately with the Board. The Board shall review the proposed change and advise the applicant whether the proposed change is subject to review.
- F. The applicant shall file implementation reports with the Green Mountain Care Board at six-month intervals after the date of this certificate of need through the date all components and phases of the project are complete and fully operational and all invoices associated with the project have been paid. The implementation reports shall include the following information and analysis:
 - 1. Overview of the project, including information and analysis demonstrating that the project is in conformance with the scope of the project as described in the application. Such reports must identify any changes to the financing of the project.
 - 2. A separate spreadsheet including the following columns: certificate of need approved amount, expenditures for the six-month reporting period and reporting period dates, dollars expended to date, dollars that remain, and percent under/over budget with line items under each column per the application line items and including renovation, equipment and contingency costs.
 - 3. Notice of any material or nonmaterial change, or verification that no material or nonmaterial changes are contemplated or have occurred.
- G. The Green Mountain Care Board may, after notice and an opportunity to be heard, make such further orders as are necessary or desirable to accomplish the purposes of this certificate of need, and to ensure compliance with the terms and conditions of this certificate of need.
- H. All reports, notices, forms, information or submissions of any kind required to be submitted to the Board as a condition of this certificate of need shall be signed by the applicant and verified by the chief executive officer, or by his or her designated representative.
- I. The conditions and requirements contained in this certificate of need shall remain in effect for the duration of the reporting period defined in paragraph F, above.

SO ORDERED.

Dated: May 22, 2017 at Montpelier, Vermont

s/ Cornelius Hogan)

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s/ Jessica Holmes)

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s/ Robin Lunge)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: May 22, 2017